

PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

Recommendation for Evaluation of Implementation **Pursuant to Paragraph 8 of the Geneva Ministerial Declaration**

Communication from the United States

Objective

Pursuant to paragraph 8 of the May 1998 Ministerial Declaration, to provide an improved structure, focus and accountability to WTO Members' unilateral and collective efforts to implement existing WTO Agreements. This initiative would have the dual aim of facilitating proper implementation of the obligations conferred by WTO Agreements, while permitting Members to reap more fully the benefits of such Agreements at the same time that they expand and strengthen the multilateral system in mutually agreed areas. Such activity would not prejudice any Member's rights to resort to dispute settlement procedures to redress implementation concerns, including special procedures which might be agreed in certain instances.

Proposal

That Ministers, acting on recommendations developed pursuant to paragraph 8 of the Geneva Ministerial Declaration, direct the General Council to enhance its monitoring and surveillance efforts with existing Committees and Bodies by instituting a comprehensive and ongoing program on implementation of existing WTO Agreements and Decisions, with the central aim of ensuring the full, effective and timely implementation of WTO obligations, including the anticipated reviews already provided for pursuant to the built-in agenda.

In pursuing this evaluation of implementation, the General Council and subsidiary bodies would pay special attention to and/or base their work on the following:

- ▶ All pertinent implementation issues/problems would be inventoried by each subsidiary body for their respective Decisions or Agreements by no later than 31 July 2000.
- ▶ Where consensus exists in a subsidiary body to pursue a specific implementation work program on an individual matter, or where a mandate already exists to pursue an activity, such work would continue or proceed immediately.
- ▶ Each subsidiary body would be responsible for submitting an annual comprehensive implementation work plan to the General Council, in conjunction with its annual report. These work plans would report on implementation accomplishments, progress in implementation work already under way, as well as identify plans, recommendations or options for addressing implementation issues where General Council guidance or direction may be appropriate, or where recommendations ensuing from mandated reviews may require General Council or Ministerial action.

In terms of decisions which might be taken at the third session of the Ministerial Conference to facilitate this initiative, we would propose that:

- ▶ Where technical assistance needs are at issue, Ministers should instruct the General Council to ensure that the identification and addressing of such needs are coordinated through whatever mechanisms may be established in follow-up to any Decisions taken at Seattle with respect to improved coherence in technical assistance and capacity building.
- ▶ Where transition periods other than those that expire as of 1 January 2000 (e.g., industrial export subsidies maintained by developing country Members) are at issue, Ministers should take or authorize whatever steps may be necessary to ensure that there is a sufficient flow of information concerning progress and specific plans being undertaken by individual Members to come into compliance with applicable deadlines.
- ▶ Where notification obligations are at issue, Ministers should take, approve or endorse appropriate steps to streamline obligations and procedures for submitting and reviewing notifications, consistent with the principle that any such steps should not materially detract from the underlying objective of transparency or the substance of legal obligations set forth in relevant Agreements and Decisions.

Illustrative Areas of Focus

While the United States believes that the implementation initiative should be comprehensive in scope, a few Agreements deserve special mention insofar as we are convinced that the nature of the progress to be made first and foremost concerns the proper implementation of existing provisions.

Sanitary and Phytosanitary Measures: Only a few months ago, the Committee on Sanitary and Phytosanitary Measures (SPS) adopted its report of the triennial review of the SPS Agreement, where several matters were identified for follow-up activity and improved notification procedures were agreed upon. Many of the points mentioned by India and others in the preparatory process were identified in the triennial review (e.g., transparency, reasonable intervals between notification and entry into force of measures, full participation in international standards-setting activities), and we believe these should continue come under examination in the work of the Committee.

Technical Barriers to Trade: In similar fashion, in its first triennial review, the Committee on Technical Barriers to Trade (TBT) highlighted the importance of the implementation and operation of Articles 5 through 9 of the TBT Agreement to avoid unnecessary obstacles to international trade. Work in that Committee has progressed and, in June of this year, the Committee organized a WTO Symposium on Conformity Assessment Procedures which led to a rich exchange of information and national experiences. On the basis of those discussions, the Chairman of the TBT Committee noted, in his report on the Symposium, the possibility of a code of good practice on conformity assessment. The United States believes that this idea merits

favorable consideration as a means of identifying for Members how best to implement the provisions and fulfill the purposes of Articles 5 through 9 of the TBT Agreement, thereby preventing unnecessary obstacles to trade. The United States would, therefore, support further consideration of a code of good practice on conformity assessment as part of the ongoing work of the Committee, along with its consideration of the range of issues identified in its first triennial review and follow-on discussions. Work in the Committee has also progressed on transparency in international standards and the United States notes that it has submitted a draft U.S. proposal for a decision on this matter by the Committee at its next meeting.

Antidumping: In terms of implementation priorities, we also wish to draw attention to work under way in the Committee on Anti-dumping Practices, and its Ad Hoc Group on Implementation, which should not only be continued, but deserves intensification. As many new users of this instrument are struggling to put in place domestic implementing arrangements which both conform to the rigorous requirements of the Agreement and are reasonably accessible to domestic parties, WTO Members should focus their efforts on sharing experiences, clarifying interpretations and improving technical assistance to permit all Members to use such instruments effectively and in full conformity with WTO obligations. The United States considers this issue to be important from the perspective of both its interests as a user of trade remedies and its interests as a major exporter. We are persuaded that, in light of the organization's limited resources and already full agenda, the WTO should direct its attention to improving, clarifying and facilitating the implementation of existing rules, rather than to negotiate a new body of more complex and elaborate rules.

Trade-Related Aspects of Intellectual Property Rights (TRIPs): The United States remains of the view that the priority TRIPS issue is the full implementation of TRIPS obligations by developing country WTO Members no later than 1 January 2000. While many countries are completing the process of conforming their laws to the TRIPS Agreement with this deadline in mind, we remain concerned that many Members have yet to take the actions necessary to ensure that their respective regimes are in compliance on time. Therefore, important implementation work will be initiated as part of the TRIPS built-in agenda early next year, specifically the review of developing country implementation under Article 71.1. It is anticipated this work will continue through the end of 2001.

That being said, like other Members, the United States foresees the possibility of improvements to the TRIPS Agreement, in due course. *Inter alia*, we believe that it will be important to examine and ensure that standards and principles concerning the availability, scope, use and enforcement of intellectual property rights are adequate, effective, and are keeping pace with changing technology, including further development of the Internet and digital technologies. We also expect that, once Members have the benefit of the experience gained through full implementation of the Agreement, we will want to examine and ensure that Members have fully attained the commercial benefits which were intended to be conferred by the TRIPS Agreement. With this in mind, part of the current built-in agenda for the TRIPS Agreement already provides in Article 71 an opportunity for subsequent review of the Agreement, having regard to the experience gained

through implementation, and to consider whether modifications are warranted in the light of any relevant new developments. Article 71 also provides that amendments to the TRIPS Agreement may be referred to the Ministerial Conference if they serve the purpose of incorporating higher levels of intellectual property rights that have been achieved in other multilateral agreements and accepted to by all WTO Members.

Background and Rationale

Article III:1 of the Marrakesh Agreement Establishing the World Trade Organization states as the first function of the WTO that it “shall facilitate the implementation, administration and operation, and further the objectives, of this Agreement and of the Multilateral Trade Agreements, and shall also provide the framework for the implementation, administration and operation of the Plurilateral Trade Agreements.” The full and proper implementation of the WTO Agreements has consistently been a priority objective of Ministers in their ongoing oversight of the operation of the WTO. At the first session of the Ministerial Conference in Singapore, Ministers signaled that they “attach high priority to full and effective implementation of the WTO Agreement in a manner consistent with the goal of trade liberalization” and that “further effort in this area is required, as indicated by the relevant WTO bodies in their reports.”

At last year’s second session of the Ministerial Conference, in paragraph 8 of the Declaration, Ministers stated that “full and faithful implementation of the WTO Agreement and Ministerial Decisions is imperative for the credibility of the multilateral trading system and indispensable for maintaining the momentum for expanding global trade, fostering job creation and raising standards of living in all parts of the world. When we meet at the Third Session we shall further pursue our evaluation of the implementation of individual agreements and the realization of their objectives. Such evaluation would cover, *inter alia*, the problems encountered in implementation and the consequent impact on the trade and development prospects of Members. We reaffirm our commitment to respect the existing schedules for reviews, negotiations and other work to which we have already agreed.”

Paragraph 8 of the Geneva Ministerial Declaration, therefore, foreshadows the intention of Ministers to address the matter of implementation at the third session of the Ministerial Conference in a more coordinated fashion. This will be especially important as Members necessarily reorient some of their resources and energies to the initiation and expeditious pursuit of negotiations in agriculture, services and other areas to be agreed. Egypt, in its submission of 23 June 1999 (WT/GC/W/216), sensibly highlights the need for Members to prepare adequately to address difficulties and priorities pertaining to implementation at a time when the organization would be moving forward in the areas of mandated negotiation, in addition to other areas which may become subject to negotiation or be the subject of exploratory work. The United States shares the interest of others who have attached importance to the issue of implementation as a core feature of the organization’s work. As we indicated in our submission of 3 November 1998 (WT/GC/W/107), the United States is eager to work with other WTO Members to ensure that the full and effective implementation of Agreements reached in the Uruguay Round remains a

prominent aspect of the WTO's future work program. In that submission, we pointed to four general situations characterizing the status of implementation which we believe require attention:

- (i) Areas where affirmative action is needed by Member governments to comply with existing Agreements and Decisions, such as with respect to domestic implementing legislation and regulations, including areas where progress can be facilitated by WTO bodies;
- (ii) Areas where the nature of the implementation problem suggests the need for further clarification of the multilateral provisions, including possibly through negotiation;
- (iii) Areas where, in light of the prospective expiration of transition periods afforded by the provisions of certain Agreements, a more concerted effort was warranted to ensure compliance on schedule; and
- (iv) Areas where further attention to technical assistance, in particular setting objectives with recipients, is necessary if such assistance is to fulfill the desired results of facilitating implementation.

As acknowledged in point (ii), the ability to progress in some areas of implementation may require some measure of clarification or negotiation of the multilateral provisions, typically where such clarification or negotiation is already anticipated by the text of existing Agreements. In general, however, the United States does not perceive that negotiations in the formal sense would offer the most desirable or effective means of organizing work on implementation. Neither do we believe that it should be necessary to establish yet another body in the WTO to accomplish a task which is central to the WTO's ongoing mission and is already within the purview of the WTO's present infrastructure. Rather, what is called for is the initiation of a more disciplined approach to the topic within that infrastructure in order to reinvigorate implementation efforts. This approach should aim simultaneously to reinforce the mechanisms designed to monitor and verify compliance and to facilitate the provision of assistance and the clarification of obligations so that all Members may be better positioned to achieve compliance.

Other submissions that the United States has tabled in the preparatory process address many of the implementation issues raised thus far, *e.g.*, our proposal for greater coherence in responding to the needs and interests of Members, particularly the least-developed, who require technical assistance and capacity building programs in order to become more fully integrated into the trading system, and our proposal for a work program and negotiation on rules and provisions directed at trade facilitation – a major feature of which encompasses technical assistance and ensuring full and effective implementation of obligations in various customs-related areas of the WTO Agreements. In W/107 and elsewhere, the United States has offered specific suggestions for proper planning and proactive steps to ensure that transitional obligations in such areas as TRIPs, TRIMs, customs valuation and subsidies are fulfilled in a timely manner. And, in

agriculture and services, while significant attention will have to be devoted to the launch and conduct of new negotiations, the success of those negotiations requires ongoing attention to existing commitments and obligations in respect of continued reforms, domestic implementing legislation and multilateral work programs.